

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2299 of 1980

Date of decision: 1-12-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NM MUKHI

Versus

GUJARAT STATE FINANCIAL CORPORATION  
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Appearance:

MR A. M. Raval for Mr. M.R. Anand for Petitioner  
None present for Respondents  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 1-12-1997

## C.A.V.JUDGEMENT

The petitioner, an officer of the Gujarat State Financial Corporation, has challenged the order dated 31st March, 1980 of the respondent under which he was ordered to be reverted from the post of Senior Manager (Planning) to that of Manager (Information & Public Relations), and the order dated 12th August, 1980 under which his representation against the order dated 31st March, 1980 has been rejected.

2. The facts of the case are that the Board of Directors of the Corporation vide their resolution dated 26th November, 1976 resolved to promote the petitioner to the post of Senior Manager (Planning) in the pay-scale of Rs.1400-1800 with effect from 1-12-1976. In pursuance of the aforesaid resolution of the Board, under order dated 31st March, 1977 the petitioner was given promotion to the post of Senior Manager with effect from 1-4-1977 on probation. The period of probation has been extended from time to time and ultimately under order dated 31st March, 1980 he was ordered to be reverted back to the lower post. This order of reversion has been challenged by the petitioner before this court by filing special civil application No.878/80. That special civil application of the petitioner came to be disposed of under order dated 23rd April, 1980 with the direction to the Corporation to decide the representation of the petitioner against the order of his reversion. Under order dated 12th August, 1980 the petitioner has been informed to the effect that the said representation has been decided against him by the Board of Directors in their meeting held on 11th August, 1980. Hence this special civil application before this court.

3. Learned counsel for the petitioner raised following contention in challenging the validity of the aforesaid two orders. The first contention is that before passing the order on 31st March, 1980 the petitioner has not been given any notice or opportunity of hearing. Not only that, even the order does not contain any reason. Second, the petitioner's promotion under resolution of the Corporation dated 26th November, 1975 was unconditional. The Corporation has not resolved to give promotion to the petitioner on probation and the order of the Managing Director dated 31st March, 1977 giving promotion to the petitioner on probation is counter to the Corporation's resolution. It has next been contended that there is no provision under the relevant service rules to place the petitioner on

probation. Lastly the counsel for the petitioner contended that rule 23 of the Rules is invalid.

4. The respondent Corporation in this case filed reply to the special civil application, to which the petitioner filed rejoinder. However, nobody is present on behalf of the Corporation to make submission before this court.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner and pursued the special civil application, reply and the rejoinder as well as other documents.

6. Against the order of reversion dated 31st March 1980 the petitioner has filed special civil application No.878/80 which came to be decided on 23rd April, 1980, and direction was given to the Corporation to decide the representation the petitioner filed against the aforesaid order. The resolution which has been passed by the Corporation on 11th August, 1980 has been filed on the record of these proceedings by the Corporation along with its reply at annexure-C. This resolution runs into 14 pages and a considered and detailed order has been passed in respect of the grievance made by the petitioner against the order dated 13th March, 1980. I consider it to be proper to make here reference to the contention raised and the arguments advanced by the petitioner before the Corporation in his representation against the order dated 31st March, 1980. The petitioner has raised four fold contentions/ grievance before the Corporation. The first contention was that according to the resolution of the Corporation dated 26th November, 1976 (or 29th November, 1976 - as there appears to be some mistake in the date) he should be deemed to have been promoted to the post of Senior Manager (Planning) with effect from 1-12-1976 and as such the period of probation for three years as per the service regulations was over on 30th November, 1979 and as such his reversion on 31st March, 1980 is clearly time barred. The next contention raised was that adverse remarks in the confidential report for the year 1978-79 are biased. Representation filed against the remarks has not been disposed of. Certain grievance has been made regarding the adverse remarks. Last contention has been raised that the Board should dispose of the representation of the petitioner filed against adverse remarks in the confidential report for the year 1978-79. From those contentions it is clear that the petitioner has admitted that there is provision for placing a promotee officer on probation. He further admits that his promotion on the

post of Senior Manager (Planning) under Resolution dated 26th November, 1976 and the order dated 31st March, 1977 was on probation. In view of the admissions made by the petitioner, this contention raised by the petitioner that his promotion was unconditional is untenable and unjustified. From Rule 23 of the relevant service rules of the Corporation it is no more in doubt that there is provision for placing the promotees on probation. Very conveniently in the special civil application the petitioner has avoided to make reference to the said rules. However, when he was confronted with the said rules he has contended that the said rules are invalid. This is a matter under Article 226 of the Constitution of India. When such contention is raised, necessary pleadings have to be set out and there must be specific prayer made in the special civil application to declare that the said provision to be invalid. The court has specifically drawn the attention of the counsel for the petitioner that necessary pleadings have not been made in the special civil application challenging the validity of Rule 23 as well as there is no specific prayer for declaring the provision to be invalid. Still he insisted that this contention may be recorded and dealt with. However, this insistence of the counsel for the petitioner for recording the contention for which there is no factual foundation as well as prayer in the special civil application, is not desirable, nor this Court could appreciate the same. Still I have prima facie examined that question to my satisfaction and I do not find any illegality in the proviso to the aforesaid Rule. What this rule contemplates is that on promotion to the next higher post the promotee should be placed on probation. How it can be said to be invalid or arbitrary only on the ground that the matter pertains to promotion? It is not unknown to service jurisprudence that the officers on promotion have to be placed on probation. The matter may be different where in the case of direct recruits and promotes duration of probation period may be different. But because the rule contemplates for placing an officer on probation on promotion it cannot be said to be violative of Articles 14 and 16. In the presence of the proviso to Rule 23, contention of the petitioner's counsel that there is no provision to place the petitioner on probation is wholly devoid of any substance.

7. The next question which arises for consideration is whether promotion given under resolution dated 26th November, 1975 was conditional or not. Whatever resolution which has been passed by the Corporation has to be read subject to the relevant service rules framed

by it. Under Resolution dated 26th November, 1975 the Corporation has only resolved that the petitioner should be given promotion, and the rest of the things were to be taken by the executive officer. While giving promotion to the petitioner in pursuance of the aforesaid resolution the care has to be taken of the relevant service rules and where there is specific provision for placing an officer on probation, I fail to see how it can be said to be an order contrary to the resolution of the Corporation. On the other hand in case the contention of the counsel for the petitioner is accepted, then both the resolution as well as the order of promotion, placing the petitioner on probation, will be in violation of Rule 23. It is difficult to accept that the Corporation will act contrary to or in disregard of the rules framed by it for regulating the recruitment and other service conditions of promotion. Promotion is one of the mode of appointment and when there is an appointment then there is no illegality in the action of the respondent Corporation to place the petitioner on probation, and more so when Rule 23 contemplates placing of an officer on promotion on probation. Though not very specifically, during the course of argument the counsel for the petitioner made ancillary argument that probation could have been only for a period of three years, and after expiry of the period of three years the promotee shall be deemed to be confirmed on the post. This contention has also been raised by the petitioner before the Corporation. In support of this contention the counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of State of Punjab v. Baldev Singh Khosla, reported in AIR 1996 SC 2093.

8. Rule 23 of the Rules of the Corporation contemplates or provides for automatic confirmation. Even if after expiry of period of three years probation of the petitioner has not been extended, it cannot be said to be a case of automatic confirmation. Confirmation can only be by operation of rule or passing positive order. So far as rule is concerned, as stated earlier, it no way contemplates automatic confirmation. The decision of the..R

been placed by the counsel for the petitioner is against the petitioner. I cannot do better than to reproduce the relevant portion of the judgment of the Hon'ble Supreme Court (para 4 and 5)

"Learned counsel for the respondent contends that since the rule provides an outer

limit of three years, if the respondent had not been reverted within that period, he must be deemed to have been confirmed and the High Court, therefore, was right in concluding that the respondent is a confirmed probationer. We do not find force in the contention. Sub-rule(3) of Rule 10 clearly envisages that on conclusion of the period of probation of any member of the service the Government may, if vacancy exists, confirm him in his appointment; if his work or conduct has, in its opinion, not been satisfactory, it may extend his period of probation by such period as it may think fit and thereafter pass such orders as could have been passed on the expiry of his period of probation. It would thus be seen that the outer limit of three years provided under the rule is an enabling provision to allow the probationer to continue in service without being reverted or discharged from service for failure to satisfactorily complete the period of probation, but that would not mean that the probationer, on expiry of three years' period, must be deemed to have been confirmed. The rule itself envisages a positive order of confirmation. So long as the order of confirmation is not made, even after expiry of probation, the probationer may continue and remain in service, but by allowing him to remain in service it cannot be concluded that he must be deemed to have been confirmed.

5. The rule also envisages that during the period of probation, the appointing authority is required to the performance of the work done by the probationer to the satisfaction of the appointing authority. It is seen that for the year 1991 and 1992 there were adverse remarks made upon the performance of the respondent. Obvious for that reason, his confirmation was not made. On the other hand, the period of probation was further extended as admitted by the respondent. Under these circumstances, he can not be deemed to have been confirmed. However, since the authorities had extended the period of probation and given him chance to improve his performance during the year 1993-94, .R

before reverting the respondent from service. The appointing authority is, therefore, directed to consider whether he is fit to be confirmed, on

the basis of his performance for the subsequent period and in case it considers that he may be confirmed, it would be open to them to pass appropriate orders. In case, even after consideration of the performance for the year 1993-94, his record is not found satisfactory, appropriate orders maybe passed and communicated to the respondents."

However, the counsel for the petitioner contended that during the deemed extended period of probation the petitioner's work was not assessed and it was not taken into consideration before passing the order dated 31st March, 1980. It is a different matter. The counsel may raise any ground, but there must be factual foundation for the same, which is altogether missing here. The petitioner's reversion has been ordered as his work was not satisfactory, and when this is the ground for reversion how it can be accepted that his performance would not have been taken into consideration for the whole period of probation.

9. Now remains the contention of the learned counsel for the petitioner that no notice or personal hearing was given to him before passing the order dated 31st March, 1980, and it is not a reasoned order. Suffice it to say that these contentions are devoid of any substance. The petitioner was on probation and reversion under order dated 31st March, 1980 is not by way of penalty. Reversion of probationer on the ground of unsatisfactory work is not a penalty. It is settled law that in the case of termination of service of a probationer on the ground of unsatisfactory work, no notice or opportunity is required to be given. That principle is equally applicable to the case of promotion on probation. Similarly no reason is required to be recorded in the order. Otherwise there may be criticism that it is stigmatic. The order should be innocuous, and all care should be taken that no stigma is casted. Learned counsel for the petitioner has failed to support this contention by reference to any rule or any precedent either of this court or of the Supreme Court, where it has been held that on reversion of a promotee on probation, notice or opportunity of hearing is to be given and reasoned order is to be passed.

11. In the result this special civil application fails and the same is dismissed. Rule discharged. No order as to costs. Interim relief any granted by this Court stands vacated.

